

SJR 49 Study Committee Remarks

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Chairman Barker and members of the committee. Thank you for the opportunity to provide some observations and suggestions for improving resident protections and the operations of CCRCs in Virginia.

The Senate has appropriately provided this opportunity for the consideration of reforms and I hope Virginia will become a national leader to improve and protect the Life Care model for seniors. The environment and some concerns for CCRC living is upon us and reform synergy is growing among residents.

This committee does not need any explanation or comment about the damage done by the 2008 recession and the impact on the residential housing market which has been and remains a key source of assets for providers and residents to support the CCRC retirement alternative for many seniors. The history of the recession has drawn attention to issues that may have otherwise not drawn so much attention. Crises sensitizes us to needs for change.

I would like to begin my testimony with a personal review of the journey my wife Barb and I have been on almost from the beginning of our residence in a CCRC and then ask YOU to reflect on that journey and place your self in those circumstances and consider what you believe needs to be done to address some of the issues.

Like many, if not most, we came to consider Life Care retirement based on the promise of worry free living and the security of health care as we aged in place. The non profit orientation and commitment of a faith based operator appealed to us and lead us to trust that the life savings we invested from the sale of our house would secure our future years.

This is what we/YOU will encounter on your journey.

- You will pay a substantial entrance fee, usually in the 6 figures for two persons, using the sale of your home believing that fee provides the support for the life care and especially health care. The management and use of the entrance fee will not be explained
- You will learn that this entry fee has a defined use for health care. There is no other defined use and can be used for any other need the facility defines and it is not protected in any way. But even the health care use is flawed unless some of these funds are escrowed. We will look at this later.
- You will be promised a refund if you leave the facility but often it will only be paid to you when someone else occupies your residence ,potentially deferring the return of your assets up to years. If you have insurance on your house or a car and have a fire or accident your insurance company will not tell you it can not pay what it promised until they had sold 30 more policies. I am sure you know what this activity is called. The promise made to you by your house or car insurance will be protected by financial planning that will not let this happen.
- You will be asked to sign a contract unilaterally created by the provider. Contracts are not standard and may differ from facility to facility. The contract is complex with conditions that may only be understood by a good contract attorney. An interview with 8 residents who are leaders in our community revealed that none of them in retrospect felt they had a good understanding of their contract
- You will likely not question much of the contract implications since your motivation is about your future and security for the rest of your life so you are somewhat cavalier about legal issues and complicated conditions. You

do not want to burden your family or require public care.

- You will sign the contract because you will trust the provider operating under a non profit flag and the comfort of faith based operation and the promise that if your resources run out you will be considered for subsidy from your provider but there are no guarantees.

About 5 months into this journey the facility filed for bankruptcy, we learned about the filing one week later.

The marketing glitter became tarnished.

Attorneys began to swarm around like flies including a company specializing in distressed bonds who bought up the distressed bonds planning to “flip” them for short term profit gains .We did not have the foresight or expertise to predict this outcome of our retirement decision.

In your imaginary journey with us were you comfortable and did you feel like you were treated with transparency?

The concept of CCRC living is a good one but stories like this are occurring with greater frequency suggesting there is need for reforms with stronger public oversight with insurance expertise. Virginia is fortunate to have Insurance oversight at the state level, so we have the foundation on which to build stronger regulation, standards and monitoring.

In Virginia CCRCs submit annual disclosure statements and audits and for two years prior to bankruptcy. These documents noted that “the facility was not financially viable” and no action occurred until the State Corporation Commission issued a cease and desist order on entrance fees. The chapter 11 bankruptcy process began. The oversight and technical assistance by standard setting and monitoring agencies needs to be more assertive.

Life care CCRCs are very complex operations, now even more so than before the recession. Historically and presently this complexity to administer and manage CCRCs requires expertise consistent with the complexities of this industry but

this is not always the case. This is true especially in the non profit side of the industry whose history evolves out of church affiliations and the value system of charity.

Leadership, management and governance have not always responded to the complexity and challenges of the growing CCRC industry.

It is laudable that the non profit sector has accepted the challenges that attend to the operations of CCRCs but because non profit work is noble with high values it should not be exempt from the needs of competence, transparency and accountability.

This brings us to the charge of this committee, what needs reform and hopefully the answers to the question that someone raised in the last meeting, "what is broken".

Many residents want to participate and be informed about important issues that affect their lives daily and substantial financial resources they have invested. In a number of bankruptcies nationally residents have lost all of their entry fee assets. They are able, bright retired people and seek to be considered partners not passive participants in the goals of meaningful retirement living. To achieve these goals they need to be more engaged and informed not passive recipients. Resident questions, and at times critique, should not be viewed as lack of loyalty, divisive or adversarial but rather an effort to understand and potentially contribute to solutions.

The operations of CCRCs in the contemporary environment are increasingly complex and providers need to find new and more effective ways of communicating these complexities and their implications. Residents, without the title, are owners since without them and in particular their large entrance fees there are no CCRCs. So, it is in everyone's interest that they are transparently engaged in the key strategies, fiscal operations, substantive changes and policies of the facility.

Many CCRCs are launched by organizations that borrow most and sometimes all of the funds needed. They have

limited incentive to use the financing in a highly disciplined way since they have no or very limited assets in the effort or as some would characterize it, "skin in the game". The borrowing debt levels are too high and any substantial financial stress will be the beginning of the end of the journey.

In the face of rising costs the trend in the industry is to unbundle a variety of services and to charge for them separately to increase the margin for financial success. This trend must be communicated and the budget implications and costs explained.

Lifetime care and the commitments are very similar to life and annuity insurance companies and regulation and standards should be as comprehensive, rigorous and professional as in the insurance industry.

Obtaining financial soundness and sustainability in CCRCs is job one. The following are several changes that can address this challenge.

1. Entrance Fees: One of the most important and contentious issues is the entrance fee. This fee, often in the six figures, is the life blood of financial soundness but at the expense of the resident's life savings and without any protections. The fee is in fact an unrestricted gift to the provider and can be used for any purpose, including an attachable asset by bondholders in a bankruptcy settlement. In our recent bankruptcy approximately 8.5 million dollars of entrance fees was part of the budget to exit bankruptcy. Entrance fees are also considered prepaid health insurance by IRS and residents receive a health care tax deduction for their payment. It is a contradiction and conflict for the entrance fee to have (1) unlimited use by the provider, (2) a prepaid health care premium by IRS as a health care tax deduction and (3) an attachable asset in bankruptcy. In this mix a request to escrow a defined amount of entrance fees for prepaid health care was refused as part of

the bankruptcy plan. If this does not make you uncomfortable I do not know what will. A DEFINED AMOUNT OF PREPAID HEALTH CARE FROM ENTRANCE FEES NEEDS TO BE ESCROWED AND THE REMAINDER OF THE FEES USE DEFINED SO IT CAN BE TRACKED IN AN AUDIT.

2. Transparency. In a conference setting this Spring 80 residents were asked to identify and rank issues of concern in their CCRC. Twenty five issues were identified and transparency was the top issue. Transparency builds trust and trust is essential in the uniqueness of the life care promise. Are these growing concerns about transparency just idle figments of residents' imagination, or is there substance behind their concerns? I hope to share that there is substance. Had I known that bankruptcy was immediate and some of my entrance fee could be used for bankruptcy bail out I would have left the marketing office very quickly.
3. Governance. CCRCs organized as non profits have a public trust (the reason they are called trustees) with the benefits of exempt taxation. Therefore, they should be as accountable to residents as they are to the capital of investors and bondholders covenants...they are not. For these reasons residents should have representation on the boards of nonprofit CCRCs and this inequity corrected.
4. Equity. The forfeiture of resident entry fee investments in CCRCs is unfair and inequitable. The providers' contingent dependence on promised refunds of successor occupants defines this unfairness and places the leaving resident in an undefined time frame for their refund and access to a timely refund of assets for future planning. Residents need the same protection that regulated securities have by forbidding cascading contracts under federal securities laws.

and risks, much like the financial crises of the 2008 recession, deserve our best efforts.

The National Continuing Care Residents Association (NaCCRA) has launched a financial soundness initiative that can inform some of the reforms that are needed legislatively. This effort is not complete but NaCCRA would look forward to collaboration with The Commonwealth of Virginia legislative efforts to bring better oversight and standards comparable to the insurance industry. And make Virginia a model for the industry and their residents.

Thank you for the opportunity to share these perspectives for reform.

I will try to answer any questions you may have and or pursue additional information that may be of value to this important task.